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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/765,834	01/29/2004	Yoshiki Nobuto	248226US0	2367		
22850	7590	01/05/2009				
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.	EXAMINER					
1940 DUKE STREET	STEELE, JENNIFER A					
ALEXANDRIA, VA 22314	ART UNIT		PAPER NUMBER			
	1794					
NOTIFICATION DATE		DELIVERY MODE				
01/05/2009		ELECTRONIC				

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>		Application No. 10/765,834	Applicant(s) NOBUTO ET AL.
		Examiner JENNIFER STEELE	Art Unit 1794
<p><b>– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –</b></p> <p>THE REPLY FILED 15 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input checked="" type="checkbox"/> The period for reply expires 3 months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> <p><b>NOTICE OF APPEAL</b></p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p> <p><b>AMENDMENTS</b></p> <p>3. <input checked="" type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input checked="" type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p> <p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____. </p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input checked="" type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input checked="" type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____.    Claim(s) objected to: _____.    Claim(s) rejected: 1-7.    Claim(s) withdrawn from consideration: _____. </p> <p><b>AFFIDAVIT OR OTHER EVIDENCE</b></p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p> <p><b>REQUEST FOR RECONSIDERATION/OTHER</b></p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  <u>See Continuation Sheet</u></p> <p>12. <input type="checkbox"/> Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____. </p> <p>13. <input type="checkbox"/> Other: _____. </p> <p>/D. Lawrence Tarazano/    Supervisory Patent Examiner, Art Unit 1794</p>			

Continuation of 11. does NOT place the application in condition for allowance because: Applicant disagrees with the Examiner's alleged lack of basis in the specification for the negative limitation in Claim 1 and states that the "lack of literal basis in the specification for a negative limitation may not be sufficient to establish a *prima facie* case for lack of descriptive support". Examiner notes that Applicant's arguments are clear and explain how the microfine fiber bundle (A) is produced from Spinning Example 1 and microfine fiber bundle (B) is produced from Spinning Example 5 and that Example 1 is formed by blending, the microfine fiber forming fibers obtained in Spinning Examples 1 and 2 and finally made into the leather-like sheet substrate. Applicant's arguments are not persuasive because the specification must be relied upon for this clear and concise disclosure. As written in the previous 35 USC 112 1st rejection, the specification is written to state that Spinning Example 1 is formed from polyurethane as the island component and polyethylene as the sea component are spun into a microfine fiber-forming fiber. Spinning Example 1 does not equate this microfine fiber-forming fiber to the microfine fiber bundle (A) as recited in Claim 1. Spinning Example 1 is made from polyurethane which the specification does teach is elastic. Claim 1 also describes "the microfine fiber bundle (A) "comprising" 10 to 100 microfine fibers ...which are made of an elastic polymer" Comprising is not exclusive of other types of fibers and therefore applicant's arguments not commensurate with the scope of the claims. As the limitation is written "wherein microfine fiber bundle (A) does not include non-elastic polymers and microfine fiber bundle (B) does not include elastic polymer", the specification is not clear that spinning example 1 is microfine fiber bundle (A) and therefore the embodiment of Example 1. Applicant's arguments that the disclosure can be implicit are not persuasive. The specification does not describe the invention as claimed in such as way as to reasonably convey to one skilled in the relevant art that the inventor had possession of the claimed invention.